

I. PETITIONER’S STANDING TO APPEAL

Petitioner submitted written comments and oral testimony to the Keizer City Council.

R 36, 41, 284, 651, 991.

II. STATEMENT OF THE CASE

A. NATURE OF THE LAND USE DECISION AND RELIEF SOUGHT

Petitioners appeal the Keizer City Council decision “Order In the Matter of the Application of E-Village, LLC for Approval of the Keizer Station Master Plan/Subdivision (Area- C Keizer Station)(Master Plan Case N0. 2010-16/Subdivision Case No. 2010-18).” The City’s order approves a mixed use development consisting of retail, office, multi-family residential, medical buildings uses, and an approximately 116,000 square foot Larger Format Store.

Petitioners seek reversal or remand to require the City to properly comply with provisions of the Keizer Development Code (“KDC”), specifically provisions of the Keizer Station Master Plan requiring concurrent development of the retail, office, multi-family residential, medical buildings uses with the approved Large Format Store, and provisions of the KDC applicable to estimating vehicle trip generation attributable to the Larger Format Store.

B. SUMMARY OF ARGUMENTS

FIRST ASSIGNMENT OF ERROR

The City improperly construed applicable law and failed to adopt findings supported by substantial evidence demonstrating that the approved master plan will require development of required mixed uses concurrent with the Large Format Store consistent with KDC 2.107.05(D)(3).

1. The City’s Approach to Concurrency.
2. The City’s Findings on Concurrency.
3. The City’s Interpretation is not Plausible.

- a. The City's Interpretation adds Words and Concepts to KDC 2.107.05(D)(3).
 - b. The City's Interpretation amounts to a Text Amendment.
 - c. The City's Interpretation doesn't apply the Plain Meaning of the Terms.
4. Condition 57 does not Impose a Deadline for Completion of the Mixed Uses.
5. Condition 57 does not Assure Completion of the Mixed Uses.
6. Condition 57 fails to Insure that the Larger Format Store is Compatible.

SECOND ASSIGNMENT OF ERROR

The City improperly construed applicable law and failed to adopt findings based on substantial evidence demonstrating that the applicant's 2010 Traffic Impact Analysis properly estimated vehicle trips generated by the Larger Format Store as required by KDC 2.301.04(B).

C. SUMMARY OF MATERIAL FACTS

The decision appealed is an approval of a master plan/subdivision for Area C of the Keizer Station Plan. Area C will be the third phase of a master planning process for Keizer Station of which Areas A and B have already been approved. Area C was proposed to include a mix of both residential and commercial uses. See site plan at Appendix A. The exact mix of uses was not established by the City's approval, but it was anticipated that a combination of commercial retail, office, dining, multi-family residential, medical building uses would be built in Area-C. R 1243-44, 825. In addition, an approximately 116,000 square foot "Larger Format Store" is proposed. Significant to the City Council's approval of the application, some of the anticipated retail, office, medical and other

commercial buildings are proposed to be multi-story and positioned to provide a buffer between the Large Format Store and existing adjacent residential uses to the west of Area-C. R 1244, 825-826.

The application was first reviewed by the City's Planning Commission which recommended approval. Thereafter, the City Council held public hearings on February 22, 2011 and March 7, 2011. On April 4, 2011, the City Council discussed and voted on a definition applicable to the concurrency requirement in KDC 2.107.05(D)(3) that would apply to Area-C of Keizer Station. R 520-521. On April 18, 2011, the City Council approved the application.

App. B.¹ This appeal followed.

III. JURISDICTION

The City's decision represents its final land use decision on Area-C of the Keizer Station Master Plan. The City applied its land use regulations in considering and reaching this final decision. The City's decision meets the definition of "final land use decision" in ORS 197.015(10)(a)(A) and is subject the Board's jurisdiction. Petitioners filed a timely notice of intent to appeal on May 6, 2011.

IV. ARGUMENT

A. FIRST ASSIGNMENT OF ERROR

The City improperly construed applicable law and failed to adopt findings supported by substantial evidence demonstrating that the approved master plan

¹ The City's final order is attached at Appendix B. However, the full decision including the City's identified evidence (Exhibit A), criteria and standards (Exhibit B), facts (Exhibit C), justification (Exhibit D) and action (Exhibit E) which contains the approved conditions, is not fully appended because the full decision and findings comprise nearly 250 pages, much of which is not related to Petitioners' claims identified below. Petitioners suggest that including the full decision in the brief would be wasteful and unnecessary. Instead, Petitioners have excerpted relevant portions of the findings in separate appendices associated with specific assignments of error below.

will require development of required mixed uses concurrent with the Large Format Store consistent with KDC 2.107.05(D)(3).

Petitioners testified repeatedly before the City Council that they were not completely opposed to the development of Area-C of Keizer Station. However, Petitioners and many neighbors in the area were very concerned about the impacts and compatibility of the Large Format Store with the surrounding transportation system and adjacent residential uses. One of the City's basic assumptions throughout the local review was that the other approved uses such as the office, retail, medical building uses, some of it multi-story, would buffer the adjacent residential area from the visual and noise impacts of the Large Format Store. R 825-826.

For this assumption to be realized, those other mixed uses, what the findings label "Required Mixed Use Development," would need to be constructed before or concurrently with the Large Format Store. For this reason, Petitioners argued, and the City's findings concede, that the City's concurrency requirement at KDC 2.107.05(D)(3) applies to the application. R 651-652. The crux of that concurrency requirement mandates that "[t]he approved Master Plan shall be conditioned to be constructed before or concurrently with the Larger Format Store." As explained more fully below, instead of imposing a condition that requires construction of the Required Mixed Use Development before or concurrent with the Larger Format Store, the City instead adopted a condition allowing the applicant to provide financial assurances of completion of the Required Mixed Use Development in exchange for an occupancy permit for the Larger Format Store.

1. The City's Approach to Concurrency.

The KDC requires, at minimum, concurrent development of the mixed uses and the Larger Format Store for Area-C of Keizer Station. However, the City Council held that the concurrency requirement does not mandate "completion" of the Required Mixed Use

Development prior to the Large Format Store opening, but only that completion of those buildings be financially assured. The applicable provision is KDC 2.107.05(D) and it states:

- (1) Retail buildings of the type described in KDC 2.107.02(1) that exceed 10,000 square feet ("Larger Format Stores") require the development of non-retail/non-single family home uses in the Master Plan area that have a total square footage of at least 25% of the gross leasable area of the Larger Format Store. As used herein, "non-retail" shall mean uses other than those listed in KDC 2.107.02(I).
- (2) For each square foot of vertical mixed use development in the Master Plan area, the Larger Format Store can be increased above 80,000 square feet by an equivalent amount.
- (3) The development required in Subsections D(1) and D(2) above shall take place in the same Master Plan area. The approved Master Plan shall be conditioned to be constructed before or concurrently with the Larger Format Store.

This application triggers the concurrency requirements of KDC 2.107.05(D)(3) because the applicant wants to build a 116,000 square foot Larger Format Store, and therefore, must provide 36,000 square feet of vertical mixed use development in accordance with KDC 2.107.05(D)(2).

From the time that the Planning Commission began review of this application through the end of the public testimony at the last public hearing on March 7, 2011, compliance with KDC 2.107.05(D)(3) was proposed through Condition 54. The condition appeared in its initial form in the staff report to the Planning Commission dated January 4, 2011. R 1856, 1967-1968. App. C. Condition 54 was brought forward to the City Council with the Planning Commission's recommendation in essentially the same form. R 1355. Condition 54 as reviewed by the Planning Commission primarily required simultaneous completion of the Required Mixed Use Development and the Larger Format Store. R 1833. However, as an alternative, subsection (d) of the proposed condition allowed the applicant defer construction of the Required Mixed Use Development if the applicant agreed to convey all the "property designated as the required mixed

use property” to the City before a certificate of occupancy was issued for the Larger Format Store. R 1834. This was the condition that was recommended to the City Council for approval and went forward to the City Council for the public hearing on February 22, 2011. R 1233. Petitioners objected to the proposal in writing and orally at the February 22, 2011, hearing and later at the March 7, 2011 public hearing. R 24, 41, 988-989. In particular, Petitioners argued that staff’s opinion that KDC 2.107.05(D)(3) did not specifically require “completion” of the Required Mixed Use Development prior to occupancy of the Larger Format Store was wrong and was contrary to the text of KDC 2.107.05(D)(3). R 651-652.

After the public hearing component of the March 7, 2011 City Council meeting was complete, the City Council voted to eliminate subsection (d) from proposed Condition 54. R 550-552. The City Council thereafter directed staff to draft an order approving the application with the revisions to Condition 54. R 555. Petitioners had no reason to object to this change because it eliminated the language they had been testifying against at prior hearings. Then the City Council took a hard left turn at their April 4, 2011 regular meeting. During the time set aside for “Other Business” at the April 4, 2011, meeting, the Council discussed modifying condition 54 yet again to allow the Larger Format Store to obtain an occupancy permit if: 1) foundations for the required mixed use development were in place and 2) irrevocable funding for completion of that construction was shown. R 520. Councilor McKane proposed a motion which purported to interpret “concurrency” in this way for the purposes of KDC 2.107.05(D)(3). The motion was approved and direction was given to staff to incorporate those concepts into Condition 54 and related findings. There was no discussion or interpretation of KDC 2.107.05(D)(3), or justification of how Councilor McKane’s motion complied with the text of that code provision. R 520-521.

At the April 18, 2011 City Council meeting the renumbered the condition (“Condition 57”) was adopted with Councilor McKane’s interpretation from the April 4, 2011 City Council meeting. As part of the City’s final decision, Condition 57 states in pertinent part:

“KDC 2.107.05(D)(3) provides that Required Mixed Use Developments be constructed before or concurrently with the Larger Format Store. The applicant shall demonstrate compliance with these requirements as follows:

- a. The applicant shall apply for all necessary building permits for Required Mixed Use Developments prior to or simultaneously with the application for building permits for the Larger Format Store. The Required Mixed Use Development property must be owned or controlled by the applicant at the time of building permit application.
- b. The applicant shall receive the necessary building permits for the Required Mixed Use Developments prior to or simultaneously with the necessary building permits for the Larger Format Store. The building permits for the Larger Format Store shall not be issued unless the building permits for the Required Mixed Use Developments have been granted.
- c. The applicant shall complete the following prior to issuance of any certificate of occupancy for the Larger Format Store:
 1. Submittal and approval by the City Manager of a certified copy of a formal loan commitments and/or unpledged, deposited funds available for the Required Mixed Use Developments. The total amount of such loan commitment and/or funds shall equal 100% of the Required Mixed Use Developments’ remaining project costs. Such loan commitments shall be issued by a federally chartered FDIC/FSLIC insured bank or other institutional investor and/or lender acceptable to the City on a reasonable basis.
 2. Applicant shall rough grade the entire Required Mixed Use Development sites.
 3. Applicant shall commence construction and complete a minimum of at least 100% of the foundation work for the Required Mixed Use Developments.
 4. Submittal and approval by the City Manager of an appropriate guarantee, completion/performance bond, or

other reasonably acceptable form of security to guarantee the completion of the Required Mixed Use Developments.” R 511-512.

Subsections 3 and 4 represent Councilor McKane’s interpretation. As adopted, this condition does not require construction of mixed uses before or concurrent with the Large Format Store, it requires something less, a promise of financial assurance that the mixed use development will be constructed someday.

2. The City’s Findings on Concurrency

The City’s findings in support of Condition 57 attempt to justify allowing something less than construction of the Required Mixed Use Development. R 362-364, App. D. In pertinent part, the City Council found:

The Council interprets the term “concurrency” [sic] to mean that the construction of the Required Mixed Use Developments must have substantially commenced and there are adequate assurances that the construction will be completed. The Council Concludes that the concurrency requirement can be satisfied if: (1) building permits are approved, (2) rough grading is completed for the Required Mixed Use Development sites, (3) 100% of the foundation work for the Required Mixed Use Development is completed, (4) loan approval commitments for the construction of the Required Mixed Use Development is established, and (5) the City Manager approves an appropriate guarantee, completion/performance bond, or other reasonably acceptable form of security to guarantee the completion of the Required Mixed Use Development.

The City also found that together the words “[c]onstructed ***concurrently’ does not require that construction of the Required Mixed Use Development be completed before the Larger Format Store can obtain a certificate of occupancy.” R 363.

3. The City’s Interpretation is not Plausible.

It is likely that the City and Intervenor-Respondent will argue that the City’s interpretation of KDC 2.107.05(D) is subject to the deferential standard of review under *Siporen v. City of Medford*, 349 Or 247 (2010). For reasons set forth more fully below, the City’s action

more resembles a zoning code text amendment through interpretation. However, even if *Siporen* applies, the City's interpretation is not plausible, and is therefore not entitled to deference under ORS 197.829.

- a. The City's Interpretation adds Words and Concepts to KDC 2.107.05(D)(3).

The City's interpretation of KDC 2.107.05(D)(3) adds words and concepts to the provision that are not stated in the text. By only requiring construction of the foundations of the Required Mixed Use Development and financial assurances of completion the city has effectively rewritten the provision to read, "[t]he approved Master Plan shall be conditioned **to require foundations** to be constructed before or concurrently with the Larger Format Store **and completion of the Required Mixed Use Development shall be financially assured.**" Reading these words and phrases into the provision violates ORS 174.010. Whether a local government interpretation of the express language of a land use regulation is plausible turns in part on whether the interpretation is consistent with ORS 174.010. *Western Land & Cattle, Inc. v. Umatilla City*, 230 Or App 202, 210 (2009). The added words and phrases change the meaning of KDC 2.107.05(D)(3) to allow the City to find compliance so long as foundations are built and financial promises made for completion of the Required Mixed Use Developments. The Board has held that where a land use regulation allows for the alternative of financial assurances in lieu of building, the relevant standard must expressly allow that alternative. Where the local code or state law does not include such language, substituting financial assurances for construction violates the regulation. *Gould v. Deschutes County*, __Or LUBA __, (LUBA No. 2006-100, May 14, 2007) *slip op.* at 23.

- b. The City's Interpretation amounts to a Text Amendment.

As explained above, the City's interpretation adds language to KDC 2.107.05(D)(3) which changes its meaning. This is an amendment to the provision through interpretation. The Court of Appeals has held that "to amend legislation de facto or to subvert its meaning in the guise of interpreting it, is not a permissible exercise." *Goose Hollow Foothills League v. City of*

Portland, 117 Or App 211, 218 (1992). Recently, the Board applied this case and *Western Land & Cattle, Inc.* within the context of the plausibility test the Court of Appeal set forth in *Siporen v. City of Medford*, 231 Or App 585, 589 (2009), *aff'd*, 349 Or 247 (2010) . In *Scovel v. City of Astoria*, __Or LUBA __, (LUBA No. 2009-116, January 28, 2010), the Board found that the city's interpretation of two provisions that applied to permit extensions effectively added language to the applicable code provisions that wasn't there. Citing *Goose Hollow*, the Board held that the city was free to amend its code to reflect those changes, but it could not do so under the guise of a code interpretation. *Slip op.* at 6. The Keizer City Council committed this same error in attempting to substitute a requirement that the construction of the Required Mixed Use Development be financially assured for a requirement that the uses be built at the same time as the Large Format Store. *See also, Foland v. Jackson County*, 215 Or App 157 (2007).

c. The City's Interpretation doesn't apply the Plain Meaning of the Terms.

The City's interpretation also violates other statutory interpretive rules identified by the Board in *Scovel*. In particular, the City's interpretation fails to give the terms "constructed" and "concurrently" their plain and ordinary meaning. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611 (1993). The term "constructed" as used in KDC 2.107.05(D)(3), is not defined in the KDC. Webster's Third New International Dictionary defines "construct[ed]" as "to form, make, or create by combining parts or elements: build, fabricate." One part of the definition of the synonym "build" is "to form by ordering and uniting materials by gradual means into a composite whole."² The term "concurrent" is also not defined by the KDC. The dictionary meaning of "concurrent" is "occurring, arising, or operating at the same time often in relationship, conjunction, association, or cooperation."³ Here, the City has interpreted the term

² Webster's Third New International Dictionary.

³ Webster's Third New International Dictionary, p. 472.

“concurrent” to mean the construction of the mixed use development must start at the same time as the Large Format Store, but completion of the mixed use development can occurring sometime in the undefined future after the Large Format Store is already has its occupancy permit and is up and running. That interpretation is at odds with the plain meaning of the term “concurrent” which dictates that both the Required Mixed Use Development and Larger Format Store be constructed “at the same time.”

The City attempts to side step these definitions by arguing that the opponents have improperly conflated to meaning or “constructed before” and “constructed concurrently.” R 363. The findings state that the City Council read the phrase “concurrently with” to mean that the Required Mixed Use Development be in the process of construction at the same time as the Larger Format Store is being constructed. R 363. The City’s portrayal or Petitioner’s argument is incorrect. Petitioners simply argued that providing a loophole that allows the applicant to potentially avoid completion of the Required Mixed Use Development is inconsistent with KDC 2.107.05(D)(3). R 651. Petitioners would also point out that the very nature of constructing a building, here the mixed use development, is that it be completed. A retail building, office building or medical building cannot perform its function if it is not complete. An uncompleted structure is not a building. A combination of installing foundations for the mixed use buildings and financial assurances to finish the buildings do not constitute “construction” of the required mixed use development either before or at the same time that the Larger Format Store is under “construction.”

4. Condition 57 does not Impose a Deadline for Completion of the Mixed Uses.

Compliance with KDC 2.107.05(D)(3) is not certain because Condition 57 does not contain a deadline for completing the Required Mixed Use Development.

Subsection C(4) is the lynch pin of Condition 57 and it is completely open ended. Again, the text of that subsection states:

4. Submittal and approval by the City Manager of an appropriate guarantee, completion/performance bond, or other reasonably acceptable form of security to guarantee the completion of the Required Mixed Use Developments.

Once the foundations are installed, the certainty of completing the Required Mixed Use Development goes into the black box of the City Manager's acceptance of financial assurances. There are no stated limits on the City Manager's discretion as to when the mixed uses must be complete. Absent a stated deadline, the condition could allow the mixed use development to remain unfinished for any amount of time so long as the City Manager concludes that that completion is guaranteed. This open ended approach is contrary to the concept of concurrency and does not come close to satisfying the definition of "concurrently" as used in KDC 2.107.05(D)(3).

Moreover, there is no identified mechanism for challenging the City Manager's decision. There is no provision for a public hearing to allow interested parties to comment on the City Manager's decision. On this point alone, the City has violated the Board's decisions in *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447-48 (1992) and its progeny; *see also Gould v. Deschutes County*, 216 Or App 150, 162, 171 P3d 1017 (2007) and *Oregon Coast Alliance v. Curry County*, __Or LUBA __, (LUBA No. 2011-005, May 19, 2011) *slip op.* at 5. Without such a checking mechanism on the City Manager's discretion, the City could legally allow the Required Mixed Use Development to sit unfinished for years so long as the found that they would be completed someday.

5. Condition 57 does not Assure Completion of the Mixed Uses.

Even if subsection C(4) of Condition 57 did include a deadline, the condition still could not guarantee with certainty that the Required Mixed Use Development would be finished. First, subsection C(4) requires a performance bond or other security to guarantee completion. Performance bonds do not insure completion of a project. They are a financial remedy if a project is not built. The condition as approved allows the applicant to walk away from the project and sacrifice the bond without building the Required Mixed Use Development.⁴ Second, after the foundations of the Required Mixed Use Development are complete the applicant could allow the building permits to expire for the mixed use area. The City could not force the applicant to seek building permit extensions or reapply for the building permits, and obviously could not force the applicant to build the mixed use development without such permits. Meanwhile the Larger Format Store would have its occupancy permit and be fully operational. This potentiality undermines the purpose of KDC 2.107.05(D)(3) which is to ensure that the Required Mixed Use Development is built.

6. Condition 57 fails to insure Larger Format Store is Compatible.

KDC 3.113.04(A) requires that the City Council consider how Area-C of Keizer Station will be compatible with existing residential development. The City's findings attempt to extensively discuss how the Larger Format Store will be compatible with the adjacent residential area to the west. R 332-343. Petitioners do not challenge those findings here because the standard of "compatibility" is so subjective as to be nearly meaningless as a standard of approval

⁴ The city will likely argue that there is substantial evidence in the record that this will not happen. However, this is not a question of substantial evidence. Such evidence cannot be predictive of the future. Economic conditions change quickly and with frequency. The condition required by KDC 2.107.05(D)(3) assumes that both the mixed uses and the Larger Format Store will be constructed at the same time without regard to the applicant's financial soundness or general economic conditions. If the City desires to incorporate those concepts into the code it must do so through a zoning code text amendment, not an interpretation.

and showing findings to be deficient would likely be futile. However, the findings state that the individual buildings in the Required Mixed Use Development will themselves act as a buffer between the residential area to the west and the Larger Format Store. R 340-342. Specifically, the findings state that the medical center building “provides a visual buffer between many if not most of the residences along Chemawa Road and the Larger Format Store.” R 341. The City Council made similar findings with regard to the multi-family uses planned to be immediately adjacent to the existing residential uses to the west. R 342. However, the City’s imposition of Condition 57 has every possibility of delaying for years the completion of these Required Mixed Use Developments, or in the worst case, allowing the applicant to walk away from the project after the Larger Format Store is operational. Thus, the City’s findings of compatibility of the Larger Format Store are more assertion than fact. A condition that fully complies with KDC 2.107.05(D)(3) could achieve the code’s demand for compatibility, but as adopted Condition 57 falls short.

B. SECOND ASSIGNMENT OF ERROR

The City improperly construed applicable law and failed to adopt findings based on substantial evidence demonstrating that the applicant’s 2010 Traffic Impact Analysis properly estimated vehicle trips generated by the Larger Format Store as required by KDC 2.301.04(B).

Throughout the local proceedings Petitioners raised objections to the traffic impacts that the Larger Format Store would bring to the neighborhood. R 991-997, 666, 284. The record shows that the Larger Format Store will bring thousands of new vehicle trips to the neighborhood and will significantly increase congestion even considering the required improvements to the nearby road system and affected intersections. The intersection of McLeod Lane and Chemawa Road is of particular

concern because a large majority of the Larger Format Store customers will use the main entrance off of McLeod Lane. That this intersection work properly is critical to maintaining a safe and efficient road system for the neighborhood.

Petitioners' traffic consultant raised concerns before the City Council that the trip generation analysis used in the applicant's Traffic Impact Analysis ("TIA") was improperly calculated. R 994. The specific argument was that the applicant's 2010 TIA improperly used estimated trip generation data from the International Traffic Engineers Trip Generation Manual instead of gathering "local data" as required by the Trip Generation Handbook. The problem identified by Petitioners' traffic engineer was that the trip estimates in the TIA were for stores with square footage in a range that was different from the size of the proposed Larger Format Store which is approximately 116,000 square feet. When a store of a size outside the range of the data included in the Trip Generation Handbook is proposed, the handbook mandates that local data be gathered. R 994, 666-667.

KDC 2.301.04(B) adopts the ITE Trip Generation Manual as the standard for estimating trip generation. That provision states: "B. Typical Average Daily Trips. The latest edition of the Trip Generation manual, published by the Institute of Transportation Engineers (ITE) shall be used as standards by which to gauge average daily vehicle trips." The pertinent sections of the Trip Generation Handbook are attached at Appendix D. Section 3.4, Step 2 of the Trip Generation Handbook states that if the size

of the development is outside the "range of data" shown in the data plot, the analysis must "collect local data and establish a local rate." This procedure is the standard set by the KDC.

Neither the applicant's traffic engineer nor the City disagreed that Trip Generation Handbook was the standard for calculating trip generation, or that the proposed square footage of the Larger Format Store was outside the range of data upon which the ITE trip estimates are based. R 706-707. Instead, the applicant's traffic engineer simply concluded, "[i]n this particular case, our professional opinion is that it is appropriate to interpolate for values just outside the data range, especially since the proposed square foot (116,000) is within 7 percent of the lowest data point (123,000)." Petitioners disputed the assertion that estimated trips could be "interpolated" because neither that process, whatever it is, nor variation from the procedures identified in the Trip Generation Handbook are explicitly allowed by the Handbook or KDC 2.301.04(B). R 668. However, the City's findings merely mimic the applicant's response without explaining any rational or basis for their conclusions. R 416, App. E. The City should have required the applicant to go back and collect local data for the purposes of properly estimating trip generation from the proposed Larger Format Store.⁵ Instead, the City allowed the applicant to take a short cut that is not allowed by the KDC.

CONCLUSION

For all the reasons stated above, Petitioners respectfully request that the Board reverse or remand the City's decision.

⁵ There are multiple locations to obtain local data by conducting counts at other Larger Format Stores. The most obvious is just up I-5 in Woodburn.

Respectfully submitted this 17th day of June, 2011.

By: Kenneth D. Helm #955170
Of Attorney for Petitioners

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on June 17, 2011, I filed the original and four copies of this Petition for Review with the Land Use Board of Appeals, 550 Capitol Street NE, Suite 235, Salem, Oregon 97301, by first class mail.

I also certify that on June 17, 2011, I served a true and correct copy of this Petition for Review on the parties listed below by first class mail.

DATED this 17th day of June 2011.

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